

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFREY LYNN CAMPBELL,

Defendant-Appellant.

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UNPUBLISHED

January 4, 2000

No. 205118

Ogemaw Circuit Court

LC No. 96-001114 FH

Before: Griffin, P.J., and Wilder and R. J. Danhof\*, JJ.

PER CURIAM.

Defendant appeals by right from his jury trial convictions of operating a motor vehicle under the influence of intoxicating liquor or while having an unlawful blood alcohol level (OUIL/UBAL), MCL 257.625(1); MSA 9.2325(1); operating a motor vehicle with a suspended or revoked license, second offense, MCL 257.904(1)(b); MSA 9.2604(1)(b); and furnishing false identification information to a peace officer while being detained for a motor vehicle violation, MCL 257.324(1)(h); MSA 9.2024(1)(h). The OUIL/UBAL conviction was defendant's third in ten years, making it a felony under MCL 257.625(7)(d); MSA 9.2325(7)(d). Defendant was sentenced to concurrent terms of eighteen months to five years for the OUIL/UBAL conviction, one year for the suspended license conviction, and ninety days for the false information conviction. We affirm.

In the trial court and on appeal, defendant attempts to collaterally attack a 1993 plea-based OUIL conviction,<sup>1</sup> arguing that it cannot be used to elevate his current OUIL/UBAL conviction to a felony. Defendant alleges that his 1993 conviction was obtained without an intelligent waiver of his right to appointed counsel. At the conclusion of a *Tucker*<sup>2</sup> hearing, the trial court disagreed, finding that although "one of the pleas was particularly sloppy and the judge was particularly casual in the way he talked," under the totality of circumstances defendant intelligently waived his right to court-appointed counsel. In addition to defendant's oral statements in court, the 1993 conviction file contains a written advice-of-rights form which was referenced as part of defendant's plea.

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\* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

The written advice-of-rights form executed by defendant on April 21, 1993, provides in pertinent part:

You have the right to an attorney appointed at public expense if you are indigent (without money to hire an attorney) and if

- a. the offense charged is punishable by over 92 days in jail,
- b. the offense charged requires a minimum jail sentence, or
- c. the court determines that it may send you to jail.

In *People v Ingram*, 439 Mich 288, 300; 484 NW2d 241 (1992), our Supreme Court stated “[t]he concerns involved in collateral attacks [of guilty plea procedures] are quite different than those on direct appeal and implicate considerations of finality and administrative consequences.” Based on such considerations and the distinctions between a direct appeal and a collateral attack, the court held “that failure of a plea-taking court to adhere to the applicable plea-taking requirements during the plea proceeding does not provide a defendant the opportunity to challenge by collateral attack.” [*Id.* at 294-295.] See also *People v Ward*, 459 Mich 602; 594 NW2d 47 (1999). The only exception to the bar against collateral attacks is if the defendant did not “intelligently waive the right to counsel, including the right to court-appointed counsel if indigent.” [*Ingram, supra* at 295.]

In the present case, defendant argues the alleged invalidity of his 1993 plea as if this were a direct appeal rather than a collateral attack. However, assuming arguendo that deficiencies occurred in the taking of defendant’s 1993 plea, see, generally, MCR 6.610(E)(2), the issue in this collateral attack is not whether a technical defect occurred in the plea-taking process but whether the record, on the whole, establishes that defendant “intelligently waived the right to counsel, including the right to court-appointed counsel.” *Ingram, supra*.

As this Court stated in *People v Asquini*, 227 Mich App 702, 711; 577 NW2d 142 (1998):

Defendant’s attack on the validity of his prior OUIL/UBAL conviction constitutes a collateral attack because it is a challenge to that conviction that is not made in a direct appeal from those convictions. *People v Howard*, 212 Mich App 366, 369; 538 NW2d 44 (1995). Accordingly, and as stated above, the only real question in connection with defendant’s guilty plea to the first OUIL/UBAL charge is whether defendant intelligently waived the right to counsel. *Ingram, supra* at 294-295. *Whether the district court complied with all requirements of MCR 6.610 in taking defendant’s guilty plea is immaterial for purposes of this collateral attack.* [Emphasis added.]

On this record, particularly in view of the written advice-of-rights form executed by defendant,<sup>3</sup> we hold that the trial court did not clearly err in finding that defendant was advised of his right to court-appointed counsel and intelligently waived his right. For this reason, we

conclude that the trial court did not err in elevating defendant's present OUIL/UBAL conviction to a felony.

Affirmed.

/s/ Richard Allen Griffin

/s/ Kurtis T. Wilder

<sup>1</sup> In his motion to remand and brief on appeal, defendant incorrectly states that his 1993 guilty plea was entered on March 10, 1993. The record indicates that defendant's prior guilty pleas were entered on April 21, 1993, and December 2, 1994.

<sup>2</sup> *US v Tucker*, 404 US 443; 92 S Ct 589; 30 L Ed 2d 592 (1972).

<sup>3</sup> See also *People v Asquini*, *supra* at 712, n 4.